

KEVIN DITTRICH  
McFARLIN -v- WORD ENTERPRISES

June 19, 2017

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<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 IN THE EASTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4 CHAD McFARLIN, individually</p> <p>5 and on behalf of all</p> <p>6 similarly situated persons,</p> <p>7 Plaintiff,</p> <p>8 -v- No. 2:16-cv-12536</p> <p>9 Hon. Gershwin A. Drain</p> <p>10 THE WORD ENTERPRISES, LLC,</p> <p>11 et al.,</p> <p>12 Defendants.</p> <p>13 _____/</p> <p>14 PAGE 1 TO 124</p> <p>15 The deposition of KEVIN DITTRICH,</p> <p>16 Taken at 221 North Main Street, Suite 300,</p> <p>17 Ann Arbor, Michigan,</p> <p>18 Commencing at 10:13 a.m.,</p> <p>19 Monday, June 19, 2017,</p> <p>20 Before Cheryl McDowell, CSR-2662, RPR.</p>	<p>1 TABLE OF CONTENTS</p> <p>2 Witness Page</p> <p>3 KEVIN DITTRICH</p> <p>4</p> <p>5 EXAMINATION BY MS. ELLIS: 5</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 Exhibit Page</p> <p>9 DEPOSITION EXHIBIT NO. 1 5</p> <p>10 Notice of Taking Deposition for</p> <p>11 The Word Enterprises LLC</p> <p>12 DEPOSITION EXHIBIT NO. 2 35</p> <p>13 Articles of Organization for</p> <p>14 The Word Enterprises, L.L.C.</p> <p>15 DEPOSITION EXHIBIT NO. 3 42</p> <p>16 Articles of Organization for</p> <p>17 The Word Enterprises-St. Johns, L.L.C.</p> <p>18 DEPOSITION EXHIBIT NO. 4 48</p> <p>19 Articles of Organization for</p> <p>20 The Word Enterprises-Lansing, L.L.C.</p> <p>21 DEPOSITION EXHIBIT NO. 5 49</p> <p>22 Articles of Organization for</p> <p>23 The Word Enterprises-Haslett, LLC</p> <p>24 DEPOSITION EXHIBIT NO. 6 60</p> <p>25 Employee Handbook</p> <p>26 DEPOSITION EXHIBIT NO. 7 62</p> <p>27 Minimum Wage Notice to Tipped Employees</p>
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<p>1 APPEARANCES:</p> <p>2 MS. TIFFANY R. ELLIS - P81456</p> <p>3 Blanchard &amp; Walker PLLC</p> <p>4 221 North Main Street, Suite 300</p> <p>5 Ann Arbor, Michigan 48104</p> <p>6 (734) 619-0970</p> <p>7 tiffanyrellis@gmail.com</p> <p>8 Appearing on behalf of the Plaintiff.</p> <p>9</p> <p>10 MR. JEFFREY S. THEUER - P44161</p> <p>11 Loomis Ewert Parsley Davis &amp; Gotting PC</p> <p>12 124 West Allegan Street, Suite 700</p> <p>13 Lansing, Michigan 48933</p> <p>14 (517) 482-2400</p> <p>15 jstheuer@loomislaw.com</p> <p>16 Appearing on behalf of the Defendants.</p> <p>17</p> <p>18 ALSO PRESENT: MS. MICHELE FOLLMAN</p>	<p>1 DEPOSITION EXHIBIT NO. 8 95</p> <p>2 Google Map of St. Johns Delivery Area</p> <p>3 DEPOSITION EXHIBIT NO. 9 95</p> <p>4 Google Map of Haslett Delivery Area</p> <p>5 DEPOSITION EXHIBIT NO. 10 95</p> <p>6 Google Map of Perry Delivery Area</p> <p>7 DEPOSITION EXHIBIT NO. 11 106</p> <p>8 Conditional Employee or</p> <p>9 Food Employee Reporting Agreement</p> <p>10 DEPOSITION EXHIBIT NO. 12 109</p> <p>11 Summary Report for Andrew Wilson</p> <p>12 DEPOSITION EXHIBIT NO. 13 110</p> <p>13 Daily Delivery Orders</p> <p>14</p> <p>15 (Exhibits attached to transcript.)</p>

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<p style="text-align: right;">Page 61</p> <p>1 Q. Handing you Exhibit 6. I'll direct you to page 2 TWE000009. 3 Are these the delivery responsibilities you 4 were referring to? 5 A. Correct. 6 Q. Are you aware of any other written job description 7 that your delivery drivers have at any of your stores? 8 A. No. 9 Q. Does the same job description cover all of the drivers 10 for all of your stores? 11 A. Yes. 12 Q. And that's for all the pizza stores that you own, 13 correct? 14 A. Correct. 15 Q. Has this job description changed in any way since 16 2015? 17 A. No. 18 Q. Has this changed in any way since 2014? 19 A. No. 20 Q. How many days per week do delivery drivers work? 21 A. It varies. If they're a part-time driver, they're all 22 part-time drivers. But they can work from one day 23 to -- we normally don't work people more than forty 24 hours a week, so -- 25 Q. Without considering tips for a moment, are there any</p>	<p style="text-align: right;">Page 63</p> <p>1 A. No. I mean, I see some of it. It's not dated. 2 Q. Were you asked to produce documents in response to 3 requests in this lawsuit? 4 A. Yes. 5 Q. And did you pull those documents that you were 6 requested? 7 A. I or my area director would have pulled these, and I 8 believe Michele pulled this one if this was provided 9 to you. 10 Q. So it's your understanding that this is not the most 11 recent copy of the tip policy? 12 A. I think it is. I was reading down further. I saw the 13 minimum wage was on. So once I got down to paragraph 14 maybe three or four, I saw that it was getting up 15 there, but obviously minimum wage today is eight 16 ninety. I think this would have been in effect at 17 that time, so -- 18 Q. Who's in charge of updating the tip policy? 19 A. I would be the tip policy with Michele. 20 Q. Do you recall updating this document at any point? 21 A. I can't recall. I mean, it looks like one that we 22 have and that we use, but, once again, I did not 23 provide this one myself personally. I think I called 24 on Michele to provide the documentation that you 25 needed for some things.</p>
<p style="text-align: right;">Page 62</p> <p>1 delivery drivers employed by any of The Word 2 Enterprises that receive higher than a minimum wage as 3 their rate of pay? 4 A. I want to say there might be some. 5 Q. Do you know who they are? 6 A. I don't have that information in front of me. 7 Q. Have all of your delivery drivers been on a tip credit 8 since 2014? 9 A. I believe so, yes. 10 Q. Is the tip credit used to help the drivers meet the 11 federal minimum wage? 12 A. I want to say yes. 13 Q. That they may be paid less? 14 A. Never less than minimum wage. 15 Q. Well, a portion of their tips will be applied to their 16 wages until it reaches the minimum wage, correct? 17 A. That is part of the calculation. 18 (Deposition Exhibit No. 7 marked and 19 attached.) 20 BY MS. ELLIS: 21 Q. Handing you Exhibit 7. 22 Is this the tip credit policy that you use 23 at all of your Hungry Howie's locations? 24 A. Currently or back in that time period? 25 Q. Currently.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Well, as a representative of the company sitting here 2 today, does this accurately describe the tip policy 3 that is used at your Hungry Howie's locations for 4 delivery drivers? 5 MR. THEUER: Objection, asked and answered. 6 You can go ahead and answer if you can. 7 THE WITNESS: Like I said, without any 8 signature or anything on it, I don't have your answer. 9 BY MS. ELLIS: 10 Q. Who's management on this document? 11 A. It would be my area director, Michele, or the general 12 manager of the restaurant. 13 Q. Did you sign this document? 14 A. I did not. 15 Q. Do you know who signed this document? 16 A. No. 17 Q. Generally is it your understanding that delivery 18 drivers may receive an hourly rate of lower than the 19 minimum wage at certain times that they are working 20 for your Hungry Howie's locations? 21 A. Yes. I understand that. 22 Q. And that they receive a tip credit in order to take 23 them to the federal minimum wage, correct? 24 A. Correct. 25 Q. And that lower rate, is that applied or given to the</p>

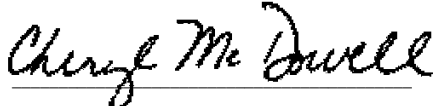
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<p style="text-align: right;">Page 65</p> <p>1 drivers only when they are delivering or the entire</p> <p>2 time that they're working?</p> <p>3 A. Only when they're delivering.</p> <p>4 Q. Have any of your delivery drivers been paid on a tip</p> <p>5 credit method different than that?</p> <p>6 A. Not to my understanding.</p> <p>7 Q. Is there any reason that you, that you have to believe</p> <p>8 that they may been paid on a tip credit method</p> <p>9 different than that?</p> <p>10 A. No.</p> <p>11 Q. You said drivers are paid every two weeks?</p> <p>12 A. Correct.</p> <p>13 Q. All drivers?</p> <p>14 A. Correct.</p> <p>15 Q. Is that for all the Hungry Howie's locations you own?</p> <p>16 A. I believe so. I have different accountants for</p> <p>17 different restaurants.</p> <p>18 Q. What about the ones owned by The Word Enterprises, are</p> <p>19 those all serviced by the same accountant?</p> <p>20 A. Yes.</p> <p>21 Q. Are they all -- are all those drivers paid on a</p> <p>22 two-week basis?</p> <p>23 A. Yes.</p> <p>24 Q. How often are drivers reimbursed for vehicle expenses</p> <p>25 at the locations owned by The Word Enterprises</p>	<p style="text-align: right;">Page 67</p> <p>1 A. Now we're up to two twenty-five per delivery to Perry.</p> <p>2 Q. When did that change?</p> <p>3 A. Sometime last year, maybe August of 2016 I think</p> <p>4 maybe.</p> <p>5 Q. So drivers are paid nightly based on the number of</p> <p>6 deliveries that they've made?</p> <p>7 A. They're compensated nightly for every run that they</p> <p>8 make. They get paid X amount of dollars based on the</p> <p>9 number of deliveries, dependent upon where they</p> <p>10 deliver to.</p> <p>11 Q. So when you say they're compensated, they walk out of</p> <p>12 the restaurant with a check?</p> <p>13 A. Cash.</p> <p>14 Q. They're paid cash every night for the deliveries that</p> <p>15 they make?</p> <p>16 A. Yes.</p> <p>17 Q. Do does The Word Enterprises, any of The Word</p> <p>18 Enterprises that you have an ownership interest in</p> <p>19 classify its delivery drivers as exempt or nonexempt</p> <p>20 from the Fair Labor Standards Act?</p> <p>21 A. I don't have the answer. I think it's nonexempt, but</p> <p>22 I'm not sure to be honest with you. I would have to</p> <p>23 look at the paperwork that we filled out.</p> <p>24 Q. Do any of The Word Enterprises or do all The Word</p> <p>25 Enterprises that you have an ownership interest in</p>
<p style="text-align: right;">Page 66</p> <p>1 collectively? When I say The Word Enterprises, I mean</p> <p>2 all of The Word Enterprises.</p> <p>3 A. Well, they're not reimbursed. They have compensation</p> <p>4 on a nightly basis.</p> <p>5 Q. Okay. What do you mean by that?</p> <p>6 A. They get paid minimum wage plus so much per run, so,</p> <p>7 per address that they go to.</p> <p>8 Q. And you're saying they're paid nightly?</p> <p>9 A. Correct, for that delivery fee that they get</p> <p>10 reimbursed for or compensated for.</p> <p>11 Q. So earlier you said that drivers at the St. Johns,</p> <p>12 Perry, and Haslett locations are paid on a per trip</p> <p>13 reimbursement rate, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And that's seventy-five cents per trip?</p> <p>16 A. It depends on which restaurant it is, but it's more</p> <p>17 than that in some cases like Perry if we're talking</p> <p>18 specifically.</p> <p>19 Q. And Perry, if a delivery goes to the Laingsburg area,</p> <p>20 they're paid a dollar seventy-five?</p> <p>21 A. Yes.</p> <p>22 Q. Is this policy written down anywhere?</p> <p>23 A. I would have to check on that, but today they're</p> <p>24 actually paid more than that.</p> <p>25 Q. How much are they paid more than that?</p>	<p style="text-align: right;">Page 68</p> <p>1 classify your delivery drivers as exempt or nonexempt</p> <p>2 from state minimum wage laws?</p> <p>3 A. They're not exempt, so that means that they would make</p> <p>4 minimum wage at least.</p> <p>5 Q. Are you asking me?</p> <p>6 A. I don't know to be honest with you.</p> <p>7 Q. Okay.</p> <p>8 A. I'm having a hard time with that one.</p> <p>9 MR. THEUER: If you don't know, just say</p> <p>10 you don't know.</p> <p>11 THE WITNESS: I don't know. I'm sorry.</p> <p>12 BY MS. ELLIS:</p> <p>13 Q. I want to talk a little bit about the policies that</p> <p>14 you have for delivery drivers.</p> <p>15 You've already said that to be hired as a</p> <p>16 delivery driver for any of the locations owned or</p> <p>17 operated by your -- by The Word Enterprises, a person</p> <p>18 would have to either own or have access to a vehicle,</p> <p>19 is that right?</p> <p>20 A. Correct.</p> <p>21 Q. That vehicle is required to be in safe working</p> <p>22 condition, correct?</p> <p>23 A. Correct.</p> <p>24 Q. It's required to be legal?</p> <p>25 A. I don't know what that means.</p>

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<p style="text-align: right;">Page 121</p> <p>1 said yes, we would ask how much they pay, how they</p> <p>2 compensated their delivery drivers, and it would give</p> <p>3 us an hourly rate. They may give us you get a</p> <p>4 commission or a dollar a run and you get to keep your</p> <p>5 tips.</p> <p>6 That's standard operating procedure for</p> <p>7 most delivery pizza carryout restaurants based on what</p> <p>8 we've done.</p> <p>9 Q. Would you tell them you were another restaurant owner?</p> <p>10 A. Absolutely not.</p> <p>11 Q. Does Hungry Howie's corporate ever audit any of your</p> <p>12 stores for anything?</p> <p>13 A. They have never audited my stores.</p> <p>14 Q. Could they?</p> <p>15 A. If they wanted to, they could.</p> <p>16 Q. For what sorts of things?</p> <p>17 A. Financial record-keeping.</p> <p>18 Q. Do they provide you with any recommendations on driver</p> <p>19 reimbursement?</p> <p>20 A. Not in writing. Not that I know of.</p> <p>21 Q. Have you had any corporate conversations, oral</p> <p>22 conversations, with people at Hungry Howie's corporate</p> <p>23 about driver reimbursement?</p> <p>24 A. I worked there. I'm going to say I think I have.</p> <p>25 I've got to believe I have.</p>	<p style="text-align: right;">Page 123</p> <p>1 the employee handbook we discussed earlier?</p> <p>2 A. Yes.</p> <p>3 Q. And then it's your responsibility to update?</p> <p>4 A. Correct.</p> <p>5 Q. Do they ever provide you with additional updates of</p> <p>6 those documents?</p> <p>7 A. If it's state or federal mandated, yes. Otherwise,</p> <p>8 not to my knowledge.</p> <p>9 MS. ELLIS: It sounds like there may be</p> <p>10 some additional documents that haven't been produced.</p> <p>11 He said he'd check on a number of things.</p> <p>12 I want to reserve the right to call him</p> <p>13 back to talk about those things if need be, but for</p> <p>14 now, we're done with him.</p> <p>15 MR. THEUER: All right.</p> <p>16</p> <p>17 (Deposition concluded at 1:19 p.m.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 122</p> <p>1 Q. Do you remember what they were about?</p> <p>2 A. No.</p> <p>3 Q. When you worked for Hungry Howie's corporate as a</p> <p>4 consultant, you also owned Hungry Howie's Pizza</p> <p>5 stores, is that right?</p> <p>6 A. Correct.</p> <p>7 Q. So when you spoke to other Hungry Howie's franchisees,</p> <p>8 were you speaking as a Hungry Howie's -- as a</p> <p>9 colleague or as a resource from the company?</p> <p>10 A. I have no idea. Depends on what the situation was and</p> <p>11 what we were talking about.</p> <p>12 Q. Are other consultants employed? Do you work with a</p> <p>13 consultant with Hungry Howie's now?</p> <p>14 A. I do.</p> <p>15 Q. Is that person a business owner, also?</p> <p>16 A. No.</p> <p>17 Q. What does that consultant provide to you?</p> <p>18 A. The same thing that I provided to those other ones</p> <p>19 when you asked earlier as far as operating, opening a</p> <p>20 restaurant, giving you an inspection review, make sure</p> <p>21 that our standards are up to whatever corporate's</p> <p>22 asking us to do.</p> <p>23 Q. Do they help you update your documents?</p> <p>24 A. No.</p> <p>25 Q. Do they provide you with the initial documents such as</p>	<p style="text-align: right;">Page 124</p> <p>1 STATE OF MICHIGAN )</p> <p>2 )SS.</p> <p>3 COUNTY OF LIVINGSTON )</p> <p>4 CERTIFICATE OF NOTARY PUBLIC</p> <p>5 I certify that this transcript</p> <p>6 is a complete, true, and correct record of the</p> <p>7 testimony of the deponent to the best of my ability</p> <p>8 taken on Monday, June 19, 2017.</p> <p>9 I also certify that prior to</p> <p>10 taking this deposition, the witness was duly sworn by</p> <p>11 me to tell the truth.</p> <p>12 I also certify that I am not a</p> <p>13 relative or employee of a party, or a relative or</p> <p>14 employee of an attorney for a party, have a contract</p> <p>15 with a party, or am financially interested in the</p> <p>16 action.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21 </p> <p>22 Cheryl McDowell, CSR-2662, RPR</p> <p>23 Notary Public, Livingston County</p> <p>24 State of Michigan</p> <p>25 Commission Expires September 13, 2019</p>